



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 18, 2005

Ms. Mia Settle-Vinson  
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City of Houston  
P.O. Box 1562  
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OR2005-03307

Dear Ms. Settle-Vinson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 222161.

The City of Houston (the "city") received a request for information related to loans disbursed by the city's Housing and Community Development Department including information regarding specific loan types and entities that are in delinquent repayment status. You claim that a portion of the requested information is excepted from disclosure under section 552.136 of the Government Code. In addition, you state that the requested information may be excepted from disclosure under sections 552.101, 552.104, 552.110, 552.113, 552.131, 552.130, and 552.133 of the Government Code, but you make no arguments regarding these exceptions. However, you represent that, pursuant to section 552.305 of the Government Code, the city has notified interested third parties of the request for information and of their right to submit comments to this office.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances).

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<sup>1</sup>The interested third parties that have been notified are: Fifth Ward Community Redevelopment Corp.; Escor Consulting Engineers, Inc.; Meg Kari, LLC; SLP Stripping & Pavement; Southern Educational Alliance; Caregivers & More, Inc.; and Skyline Transportation.

An interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from public disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this decision, the interested third parties have not submitted to this office any reasons explaining why their information should not be released. Therefore, these parties have provided us with no basis to conclude that they have a protected proprietary interest in any of the submitted information. *See, e.g.,* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990).

Next, we note and you acknowledge that the city has not complied with the procedural requirements of section 552.301 of the Governmental Code in requesting this ruling. *See* Gov't Code § 552.301(b), (e) (requiring governmental body to submit certain materials to this office within ten business days following the governmental body's receipt of records request). Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the requested information is public and must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982).

A compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 at 2 (1977). Sections 552.101, 552.130, 552.136, and 552.137 of the Government Code are such compelling interests, and we will address the applicability of these sections to the submitted materials.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information protected by other statutes, such as federal law. Federal tax returns and tax return information are confidential under section 6103 of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also id.* § 6104(b)(1)-(2) (defining "return" and "return information"). We have marked the information in Exhibits 2A, 3A, 4A, 5A, and 6A that the city must withhold under section 552.101 as federal tax return information. Additionally, section 6104 of title 26 provides in part:

(b) Inspection of annual information returns. – The information required to be furnished by section[] 6033 . . . shall be made available to the public at such times and in such places as the Secretary may prescribe. *Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a) or a political organization exempt from taxation under section 527) which is required to furnish such information. . . .*

...

(d) Public inspection of certain annual returns[.]

(1) In general. – In the case of an organization described in subsection (c) or (d) of section 501 and exempt from taxation under section 501(a) or an organization exempt from taxation under section 527(a) –

(A) a copy of –

(i) the annual return filed under section 6033 . . . by such organizations,

...

shall be made available by such organization for inspection during regular business hours by any individual at the principal office of such organization . . . and

(B) upon request of an individual made at such principal office . . . a copy of such annual return . . . shall be provided to such individual without charge other than a reasonable fee for any reproduction and mailing costs.

...

(3) Exceptions from disclosure requirement. –

(A) Nondisclosure of contributors, etc. – In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, *paragraph (1) shall not*

*require the disclosure of the name or address of any contributor to the organization. . . .*

26 U.S.C. § 6104 (emphasis added). The remaining documents include a federal tax Form 990 that contains the names of contributors. Assuming that none of these contributors is a private foundation or political organization that is excluded from the scope of subsections (b) and (d) of section 6104, we conclude that the names of contributors that we have marked in the Form 990 must be withheld from disclosure under section 552.101 of the Government Code in conjunction with sections 6103 and 6104 of title 26 of the United States Code. *See also Stanbury Law Firm, P.A. v. Internal Revenue Service*, 221 F.3d 1059 (8<sup>th</sup> Cir. 2000).

Section 552.101 also encompasses the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), which make confidential social security numbers and related records that are obtained or maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the submitted documents are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that none of the marked social security numbers in Exhibits 2A, 3A, 4A, 5A, or 6A was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.101 additionally covers the doctrine of common-law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The types of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *Id.* at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). Additionally, common-law privacy protects the rights of individuals, but not

corporations. *See* Open Records Decision Nos. 192 (1978), 620 (1993) (corporation has no common-law privacy interest in its financial information); *see also United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). We have reviewed the submitted records and marked the information in Exhibits 2A, 3A, 4A, 5A, 6A, and 7A that the city must withhold under section 552.101 on the basis of common-law privacy.

The submitted information also contains Texas motor vehicle record information and copies of drivers' licenses. Section 552.130 of the Government Code provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130. You must withhold the Texas motor vehicle record information and copies of drivers' licenses that we have marked in Exhibits 3A, 4A, 5A, and 7A under section 552.130.

We now turn to your argument under section 552.136 of the Government Code for a portion of the submitted information. This section states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The city must, therefore, withhold the account numbers we have marked in Exhibits 2A, 3A, 4A, 5A, 6A, and 7A under section 552.136.

The submitted information also contains personal e-mail addresses. Section 552.137 makes certain e-mail addresses confidential. Section 552.137 of the Government Code provides:

(a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.

(b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

(c) Subsection (a) does not apply to an e-mail address:

(1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;

(2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;

(3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or

(4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.

(d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Under section 552.137, a governmental body must withhold the e-mail address of a member of the general public, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. *See id.* § 552.137(b). You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. The city must, therefore, withhold e-mail addresses of members of the public that we have marked in Exhibits 3A, 4A, 5A, and 6A under section 552.137.

We finally note that some of the submitted documents are protected by copyright law. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See Open Records Decision No. 550 (1990).*

In summary, the city must withhold: (1) the federal tax information we have marked under section 552.101 in conjunction with federal law; (2) the marked social security numbers if they were obtained or are maintained by the city pursuant to any provision of law enacted on or after October 1, 1990; (3) the information we have marked under section 552.101 in

conjunction with the doctrine of common-law privacy; (4) the Texas motor vehicle record information and copies of drivers' licenses that we have marked under section 552.130; (5) the account numbers that we have marked under section 552.136; and (6) the e-mail addresses we have marked under section 552.137. The remaining information must be released. In releasing information that is protected by copyright, the city must comply with copyright law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/EAS/jh

Ref: ID#222161

Enc. Submitted documents

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